83 - 1825

No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1983

VIRGINIA KIRK CORD,
Petitioner,

vs.

EDWARD D. NEUHOFF, and CHARLES E. CORD,
CO-EXECUTORS OF THE ESTATE OF E. L. CORD,
also known as ERRETT L. CORD and ERRETT LOBBAN CORD,
and individually,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

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QUESTION PRESENTED

1. Was the fundamental concept of Due Process guaranteed by the Fourteenth Amendment violated by the trial judge when he entered his judgment against petitioner while entertaining an existing and admitted but undisclosed actual bias against petitioner's counsel and through her counsel against petitioner, thus rendering the judgment void?

LIST OF PARTIES

Petitioner herein, Virginia Kirk Cord, was the Appellant in the Supreme Court of Nevada, and the plaintiff in the Second Judicial District Court of the State of Nevada in and for the County of Washoe.

Respondents herein were the respondents in the Supreme Court of Nevada and petitioners for a Writ of Prohibition in the Supreme Court of Nevada and defendants in the Second Judicial District Court of the State of Nevada in and for the County of Washoe.

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OPINION BELOW

The trial court, on November 5, 1980, rendered Judgment dismissing the claim of the Real Party in Interest, Virginia Kirk Cord, widow of E. L. Cord, and petitioner herein, to a community property share of the assets of the Estate of E. L. Cord, deceased, valued at Thirty-Nine Million Dollars ($39,251,149.85). (Appendix A)

Subsequent to the rendition of judgment, the trial judge in proceedings held in open court on January 16, 1981, stated he was recusing himself on his own motion at that time because he entertained an actual bias against petitioner's counsel and through her counsel against petitioner which arose and existed from October 28, 1980, when he was informed of a complaint made against him by counsel

for petitioner with the Judicial Discipline Commission. (Appendix B).

At the time such bias was disclosed on the record, the case was on appeal to the Supreme Court of Nevada. The record had been docketed and petitioner's Opening Brief filed. The transcript of that hearing did not form a part of the record on appeal and the issue as to the effect of the actual bias of the trial court was not an issue on appeal.

After the Appellate decision affirming the judgment was rendered, petitioner petitioned for a rehearing in the Supreme Court of Nevada and sought to supplement the record in the Supreme Court by filing the transcript of the proceedings in which bias was disclosed. As a part of such petition for rehearing, petitioner contended that a rehearing was necessary to correct substantial injustice because the actual bias of the trial court defeated petitioner's right to Due Process. The petition for rehearing was denied without consideration of the merits.

Thereafter petitioner filed a Motion to Vacate and Set Aside the Judgment in the trial court pursuant to Rule 60 (b) (3) Nevada Rules of Civil Procedure upon the grounds that the Judgment was absolutely void and a legal nullity, it being rendered by the trial judge at a point in time when he was disqualified as a matter of law from acting in the case by reason of an existing but undisclosed actual bias against petitioner's counsel and through her counsel against petitioner.

Respondents immediately filed a Petition for a Writ of Prohibition in the Supreme Court of Nevada seeking to prohibit the trial court from hearing the Motion to Vacate and Set Aside the Judgment.

Petitioner opposed said Petition asserting the actual bias of the judge rendered the judgment void.

The Supreme Court of Nevada granted respondent's Petition for a Writ of Prohibition based upon two grounds:

(1) That Mrs. Cord was estopped from asserting the voidness of the judgment, and waived her challenge to the judgment.

(2) That as a matter of law Mrs. Cord's Motion to Vacate the trial court's judgment was not brought within a "reasonable time". (Appendix C)

Mrs. Cord filed a Petition for Rehearing on the Order Granting Prohibition upon the grounds that a void judgment may be vacated at any time and the doctrines of laches and estoppel and waiver do not apply and that the "reasonable time" requirement does not apply to a void judgment. That a judgment obtained without due process may be set aside at any time. (Appendix D)

The Supreme Court of Nevada denied the Petition for Rehearing without a hearing (Appendix E) and granted the Writ of Prohibition. (Appendix F)

JURISDICTION

The decision of the Supreme Court granting the Writ of Prohibition of which review is sought herein was made and entered on December 22, 1983, and became final by the denial of the Petition for Rehearing on February 15, 1984, and the issuance of a Writ of Prohibition on February 23, 1984. (Appendix E & F)

The jurisdiction of the court is invoked under Title 28 U.S.C. #1257 (3).

RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES

U. S. Const. Fourteenth Amendment.

N. R. S. 1.230 (1); N.R.C.P. 60 (b) (3).

Canon 3 (C) (a) Nevada Code of Judicial Conduct.

STATEMENT OF THE CASE

Petitioner, Virginia Kirk Cord, and E. L. Cord, also known as Errett L. Cord and Errett Lobban Cord, were married forty-three (43) years, from January 3, 1931 until his death on January 2, 1974 in Reno, Nevada.

E. L. Cord died testate leaving an estate valued at THIRTY-NINE MILLION DOLLARS ($39,251,149.85). His Last Will and Testament declared the entire estate to be his separate property.

Petitioner herein commenced an action in the Second Judicial District Court of the State of Nevada asserting the Estate to be community property acquired during their 43-year marriage and while they were living in the community property states of California and Nevada and her entitlement to one-half thereof.

The district court, Judge James J. Guinan, presiding, dismissed her action resting upon a 1953 post nuptial agreement between Mr. Cord and Mrs. Cord wherein Mrs. Cord released present and future community property rights. The trial court found the agreement enforceable and found the action barred by laches. Mrs. Cord appealed to the Nevada Supreme Court.

The Nevada Supreme Court reversed and remanded holding the agreement should be annulled and that the action was not barred by laches and established the method to be

utilized in determining the apportionment of the separate and community estate.

The issue of apportionment was presented to Judge James J. Guinan, and submitted to him for decision. Seventeen months later, on November 5, 1980, Judge Guinan rendered his decision against petitioner. (Appendix A)

The case was appealed to the Supreme Court of Nevada and the Opening Brief was filed on January 16, 1981.

On January 16, 1981, more than two months after rendition of judgment, Judge Guinan, in open court, stated that he was recusing himself since he entertained an actual bias as of October 28, 1980, against petitioner's counsel and through her counsel against petitioner. (Appendix B)

The Supreme Court affirmed and a Petition for Rehearing was denied.

Thereafter, petitioner filed a Motion to Vacate and Set Aside the Judgment pursuant to N.R.C.P. 60(b) (3) upon the ground that the judgment was void since it was rendered by a trial judge with an existing and admitted actual bias, which was undisclosed at the time the judgment was rendered. (Appendix C) Respondents sought a Writ of Prohibition in the Supreme Court of Nevada.

Petitioner opposed the Writ upon the grounds that the actual and admitted bias of the trial judge rendered the judgment void.

The Supreme Court granted the Writ. Petitioner then filed a Petition for Rehearing which was denied without consideration of the merits.

STAGES AT WHICH THE FEDERAL QUESTION WAS RAISED AND PRESERVED

The federal question in this case was raised at the trial level in petitioner's Motion to Vacate and Set Aside Judgment wherein she asserted that the actual and admitted bias of the trial judge rendered the judgment void and in her Opposition to Respondent's Petition for a Writ of Prohibition and her Petition for Rehearing.

ARGUMENT

I

Certiorari should be granted to determine whether the fundamental concept of Due Process guaranteed by the Fourteenth Amendment which requires that every party be given a fair trial in a fair tribunal, which at the very minimum requires an absence of actual bias on the part of the judge, was violated in this case.

In re Murchison, 349 U.S. 133, 75 S.Ct. 623 (1955) this Honorable Court held:

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. . . ."
>
> ". . . 'justice must satisfy the appearance of justice.' Offutt v. United States, 348 U.S. 11, 99 L.Ed.2d 11, 75 S.Ct. 11."

In *Knapp v. Kinsey*, 232 F.2d 458, 465 (6th Cir.), *Cert. denied*, 352 U.S. 892, 77 S.Ct. 131. 1 L.Ed.2d 86 (1956) the court held:

> "(1) One of the fundamental rights of a litigant under our judicial system is that he is entitled to a fair trial in a fair tribunal, and that fairness requires an absence of actual bias or prejudice in the trial of the

> case. In re Murchison, 349 U.S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 942; Talbert v. Muskegan Construction Co., 305 Mich. 345, 348, 9 N.W. 2nd 572. *If this basic principle is violated, the judgment must be reversed.* In re Murchison, supra; Berger v. United States, 255 U.S. 22, 41 S. Ct. 230, 65 L Ed 481; Moskun v United States 6 Cir., 143 F. 2d 129, 130; N. L. R. B. v. Phelps, 5 Cir., 136 F2nd 562." (Emphasis supplied)

The court stated that remarks of a judge during the course of a trial indicating a personal bias and prejudice renders invalid any resulting judgment in favor of the party favored. *Crowe v. DiManno*, 1 Cir., 225 F.2d 652 (1955); In *re Parkside Housing Project*, 290 Mich. 582, 598-599, 287 N.W. 571, (1939); *Clark v. Commonwealth*, 259 Ky. 572, 82 S.W.2d 823, (1935).

The court stated:

> "As said by the Supreme Court in Berger v. United States, supra, 255 U.S. 22, 35, 41 S.Ct. 230, 234, '. . . the tribunals of the country shall not only be impartial in the controversies submitted to them but shall give assurance that they are impartial, free, to use the words of the section from 'bias or prejudice' that might disturb the normal course of impartial judgment.'"

In the case at bar the trial judge admitted having an actual bias toward petitioner through her counsel before he rendered his judgment. (Appendix B)

In *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 100 S.Ct. 1610 (1980) this Honorable Court held:

> "(2) The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in ad-

judicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process." See Carey v. Piphus, 435 U S 247, 259-262, 266-267, 55 L Ed 2d 252, 98 S Ct 1042, (1978). The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law." See *Mathews v. Eldridge*, 424 U.S. 319, 344, 47 L. Ed.2d 18 (1976) 96 S.Ct. 893, 907.

"(3) *The requirement of neutrality has been jealously guarded by this Court . . .*" (Emphasis supplied)

This Honorable Court spoke of "the powerful and independent Constitutional interest in fair adjudicative procedure."

Nevada Revised Statutes 1.230 (1) provides:

"1. A judge shall not act as such in an action or proceeding where he entertains actual bias or prejudice for or against one of the parties to the action."

The language of N.R.S. 1.230 (1) is mandatory and self-executing. It does not require a motion on behalf of a party, but rather imposes a direct duty upon the judge to recuse himself upon the occurrence of the event therein specified, which is the existence of an actual bias or prejudice against one of the parties.

It is clear from Judge Guinan's own belated admission on the record in open court on January 16, 1981, that this consideration of statutory disqualification existed as of October 28, 1980.

It is submitted that as of October 28, 1980, the Judge was required by law to recuse himself, and was, as a matter of law, disqualified to act in the case. He nonetheless did not reveal this fact to the parties and their counsel, and, thereafter, on November 5, 1980, rendered Judgment in favor of the opposing parties.

The law of the State of Nevada, as well as other jurisdictions having similar statutory disqualification provisions support the conclusion that such a judgment is absolutely null and void.

A fair trial before a fair tribunal requirement rests upon the Due Process Clause of the Fourteenth Amendment. *Payne v. Lee,* 24 N.W.2d 259, (Minn. 1946). It is basic. It is fundamental. *Nelson v. Fitzgerald,* 403 P.2d 677 (Alaska 1965).

Part IV. *Nevada Code of Judicial Conduct Canon 3 C. Disqualification provides:*

> "(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where (a) He has a personal bias or prejudice concerning a party, ..."

The Fourteenth Amendment provides that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

In *Payne v. Lee,* (supra) 24 N.W.2d 259 (Minn. 1946) the Supreme Court of Minnesota held:

> "The failure to provide a litigant a fair and impartial tribunal before which to adjudicate his private rights is also in violation of the due process clause of U. S. Const. Amend. XIV. Buck v. Bell, 143 VA. 310, 130 S.E. 516, 51 A. L. R. 855; Stahl v. Board of Supervisors, 187 Iowa 1342, 175 N. W. 772, 11 A. L. R. 185. In the latter case the Iowa Supreme Court said (187 Iowa 1352, 175 N. W. 776): 'The constitutional guaranties recognize as a primal necessity that there be laws providing impartial tribunals for the adjudication of rights.' See 3 Willoughby, Constitution of the United States, 2d Ed., #1124; 12 Am. Jur., Constitutional Law, #635."

In this case the requirements of the Fourteenth Amendment were not satisfied. There was a serious infringement of the Constitutional guarantee of Due Process.

The term "Due Process of Law" mean a due course of legal proceedings, according to those rules and principles which have been established by our jurisprudence for the protection and enforcement of private rights. *Kennard v. Louisiana ex rel Morgan,* 92 U.S. 480 (1876).

A judgment is void where a court rendering it acted in a manner inconsistent with due process of law. The granting of relief pursuant to a F.R.C.P. 60 (b) (4) motion is automatic once this determination is made. (The Nevada Rules of Civil Procedure were patterned after the Federal Rules of Civil Procedure). Vol. 21. Fed. Procedure, Lawyers Ed. #51.139, 11 Wright & Miller, Federal Practice and Procedure #2862 (1973), *Bass v. Hoagland,* C.A. 5th 1949 172 F.2d 205 (1949).

N.R.C.P. 60 (b) (3) provides:

> "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons . . ." (3) the judgment is void; . . ."

The law of the State of Nevada is well established that a judgment rendered by a disqualified judge is void. *Frevert v. Swift*, 19 Nev. 363, 11 P. 273 (1886); *State ex rel Bullion & Exchange Bank v. Mack*, 26 Nev. 430, 69 P. 862 (1902); *Hoff v. Eighth Judicial District Court*, 79 Nev. 108, 378 P.2d 977 (1963).

II

Affirmance of void Judgment imparts no validity to the Judgment and Doctrine of Waiver does not apply.

It is a firmly established rule which has been lost sight of in many cases that a void judgment cannot be given life or validity by a mere affirmance thereof by an appellate court, even though the appellate court may have appellate jurisdiction to determine that issue.

The affirmance of a void judgment upon appeal imparts no validity to the judgment, but is in itself void by reason of the nullity of the judgment appealed from. *Pioneer Land Co. v. Maddux*, 109 Cal. 633, 642, 42 P. 295 (Calif. 1895) where the Supreme Court of California held:

> "It has been held that the affirmance by an appellate court of a void judgment imparts to it no validity, and especially if such affirmance is put upon grounds not touching its validity." . . . Thus, where a void judgment has been affirmed on appeal by the Supreme Court of Texas, the court said: 'The judgment of affirmance rendered by this court could not impart to

> it validity, but would itself be void by reason of the nullity of the judgment appealed from.' Chambers v. Hodges, 23 Tex. 105.110. The Supreme Court of Mississippi said that the affirmance of a void judgment on appeal, upon grounds not touching but overlooking its invalidity, did not make it valid. Wilson v. Montgomery. 14 Smedes & M. 205, 207. When a judgment is lacking in any of the foregoing particulars, it matters not whether it was rendered by the highest or the lowest court in the land; it is equally worthless. No one is bound to obey it. The oath of all offices, executive, legislative, or judicial, compels them to disregard it. . . ."

(In the case at bar the Supreme Court of Nevada's affirmance of the judgment was put upon grounds not touching its validity.) See also *Hager v. Hager*, 199 Cal. App.2d 259, 261, 18 Cal.Rptr. 695 (1962), *Adohr Milk Farms, Inc. v. Love*, 63 Cal.Rptr. 123 (1967). *State v. Thomas*, 302 P.2d 261, (Ariz. 1956) where the Supreme Court of Arizona held "When a void judgment is appealed and affirmed without an adjudication as to whether it is void, the affirmation does not prevent subsequently questioning its validity on that ground.

Thus the affirmance on appeal cannot embue the void judgment with life and there was no waiver.

A court has no authority or jurisdiction to act if it has an actual bias. Where a court has no authority to act, its acts are void as though they never occurred, and the parties cannot be estopped from objecting thereto, even if the parties appealed the judgment on merits. *State ex rel Abel v. Breen*, 41 Nev. 516, 173 P. 555 (1918); *Fitchett v. Henry*, 31 Nev. 326, 102 P. 865, 104 P. 1060 (1909).

III

Void Judgment may always be attacked directly or collaterally and Doctrines of Waiver, Estoppel or Reasonable time do not apply.

Petitioner herein attacked the judgment by a Motion to Vacate and Set Aside the Judgment made pursuant to N.R.C.P. 60 (b) patterned after F.R.C.P. 60 (b).

> "It is well established that a void judgment or order may be vacated at any time and the doctrines of laches and estoppel do not apply." *Thayer v. Village of Downers Grove*, 16 N.E. 2d 717 Ill. (1938).

A void judgment and decree is subject to attack at any time and any motion to vacate the order filed more than 30 days after the entry thereof and made to the court that rendered it is a collateral attack thereon. *Cherin v. R. & C. Company*, 143 N.E. 2d 235 (Ill. 1957).

A void judgment is subject to collateral attack at any time and in any place by any interested party. *Carter v. Carter*, 307 P.2d 630, 148 C.A.2d 845 (1957).

In *International Glass & M., Inc. v. Banco Gan. Y Agr.*, S. A. 545 P.2d 452 (Ariz. 1976) the court held:

> "The 'reasonable time' requirement of Rule 60 (c) Rules of Civil Procedure does not apply when a judgment is atacked as void. Misco Leasing, Inc. v. Vaughn, 450 F 2d 257 (10th Cir. 1971); Taft v. Donellan Jerome, Inc., 407 F. 2d 807 (7th Cir. 1969); Bookout v. Beck, 354 F 2d 832 (9th Cir. 1965); State v. Romero, 76 N.M. 449, 415 P.2d 837 (1966). In Crosby v. Bradstreet Co., 312 F. 2d 483 (2d Cir. 1963), Cert. den. 373 U. S. 911, 83 S. Ct. 1300, 10 L. Ed. 2d 412, (1963) A judgment was vacated as void 30 years after its entry and in United States v. Williams, 109 F. Supp.

456 (W.D. Ark. 1952) a delay of 22 years did not bar relief."

The court also stated:

"We likewise find no merit in appellee's assertion of laches since a void judgment cannot acquire validity because of laches." *Misco Leasing, Inc. supra; Austin v. Smith*, 114 U.S. App. D.C. 97, 312 F.2d 337 (1962).

In *Weaver v. Frazell*, 547 P.2d 1005 (Kan. 1976) the Supreme Court of Kansas held that a judgment that is void for lack of due process may be set aside at any time despite any statute of limitations otherwise applicable to an action to set aside such judgment. U. S. C. A. Const. Amend. 14; K. S. A. Const. Bill of Rights, #2.

In *Nesbitt v. City of Albuquerque*, 575 P.2d 1340 (New Mex. 1977) the court held:

"There is no discretion on the part of a district court to set aside a void judgment. Such a judgment may be attacked at any time in a direct or collateral action. Chavez v. County of Valencia, 86 N. M. 205, 521 P. 2d 1154 (1974)." See also *Matter of Estate of Baca*, 621 P.2d 511 (New Mexico 1980).

21 Fed. Procedure, Lawyers Edition #51:138 provides F.R.C.P. 60 (b) (4) authorizes relief on the ground that the judgment is void. The right to relief from a void judgment is absolute and not a matter within the Court's discretion. Nor do the time limitations applicable generally to F.R.C.P. 60 (b) motions apply to motions seeking relief for voidness, citing *Pacurar v. Hernly* (1979, C.A. 7 Ind) 611 F.2d 179, where the U. S. Court of Appeals 7 Cir. held: ". . . as applied to a motion for relief from a void judgment under Rule 60 (b) (4), the 'reasonable time'

limitations in Rule 60 (b) 'must generally mean no time limit, . . .' ". See 28 F.R. Serv.2d 606.

In *N. Y. State Health Facilities Ass'n, Inc. v. Carey*, 76 F.R.D. 128 (1977 S.D. N.Y.) 23 F.R. Serv. 2d 1576 the court held that "Rule 60 (b) places no time limit on an attack upon a void judgment."

Also the moving party need not show a meritorious defense. *New York State Health Facilities Assoc. v. Carey* (1977 S.D. N.Y.) 76 F.R.D. 128, 23 F.R. Serv. 2d 1576.

Thus the issue of voidness by reason of disqualification cannot be constitutionally subjected to waiver, estoppel or the reasonable time requirement as the Supreme Court of Nevada erroneously attempted to do in its Order Granting the Petition for a Writ of Prohibition. (Appendix C). Such doctrines cannot substitute for the minimum requirements of Due Process, and cannot create legal validity where it never existed in the first place.

The case cited by the Nevada Supreme Court in its Order Granting the Writ of Prohibition, i.e., *United States v. Conforte*, 624 F.2d 879, 9th Cir. (1980) is not in point. The defendant in that case had knowledge *before trial* of certain facts giving rise to potential disqualification and actual bias was denied.

Renfro v. Forman, 99 Nev. 70, 657 P.2d 1151 (1983) involved procedural irregularities and did not pertain to a void judgment.

The Nevada Supreme Court held *In The Matter of Ross and Flangas*, 99 Nev. Advance Opinion 1 (1983):

> "The United States Supreme Court has made it clear that '(t)he Due Process Clause entitles a person to an

> impartial and disinterested tribunal in both civil and criminal cases.' Marshall v. Jerrico, Inc. 446 U.S. 238, 242 (1980). It has further said: 'Not only is a biased decisionmaker constitutionally unacceptable but 'our system of law has always endeavored to prevent even the probability of unfairness.' Withrow v. Larkin, 421 U.S. 35, 48 (1974); Gibson v. Berryhill, 411 U.S. 564 (1973)."

This Honorable Court in *Withrow v. Larkin*, supra, 421 U.S. 35, 48 (1973) stated:

> ". . . In pursuit of this end, various situations have been identified in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable. . . ."

In the case at bar there was no probability *but an admission of actual bias* by the judge which existed at the time he rendered his judgment. This cannot be "constitutionally tolerable."

There was a clear violation of the Fourteenth Amendment, and petitioner was not given the benefit of Due Process of Law.

CONCLUSION

For the reasons set forth above, petitioner, Virginia Kirk Cord, respectfully requests that this Honorable Court grant the Writ and reverse the decision of the Supreme Court of Nevada and in so doing, that this Honorable Court continue to "jealously guard" the requirement of neutrality by an impartial and unbiased tribunal.

Respectfully submitted this 4th day of May, 1984.

PETERSEN & PETERSEN

STEVEN F. PETERSEN*
NADA NOVAKOVICH
Attorneys for Petitioner

**Counsel of Record*

(Appendices follows)

Appendix A

In the Second Judicial District Court
of the State of Nevada
In and for the County of Washoe
No. 298806
Dept. No. 6

Virginia Kirk Cord,
Plaintiff,

vs.

Charles E. Cord and Edward D. Neuhoff,
Co-Executors of the Estate of E. L. Cord, deceased, et al.,
Defendants.

[Filed Nov. 5, 1980]

JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff take nothing by her action and that the action is dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants are awarded their legally taxable costs of this action.

DATED this 5th day of November, 1980.

/s/ JAMES J. GUINAN
District Judge

Appendix B

In the Second Judicial District Court
of the State of Nevada
In and for the County of Washoe
Honorable James J. Guinan, District Judge
No. 298806 and 292073

Virginia K. Cord,
Plaintiff,

vs.

Edward D. Neuhoff and Charles E. Cord, et al.,
Defendants.

In the Matter of the Estate of
E. L. Cord, aka Errett L. Cord, aka Errett Loban Cord,
Deceased.

[Filed Jan. 27, 1981]

TRANSCRIPT OF PROCEEDINGS
January 16, 1981
Reno, Nevada
RENO, NEVADA,
FRIDAY, JANUARY 16, 1981, 9:30 A.M.

THE COURT: In the matter of the estate of Cord and Cord against Cord.

We are in open court this morning to make a record in these two cases numbered 292073 and 298806 on the disqualification of myself as judge in any further proceedings.

On October 28th, 1980, I was informed by Mr. Newpher, who was the secretary at the time of the Judicial Discipline

Commission, that Miss Novacovich had filed a complaint against me with the Commission.

After due consideration of that event I decided that I entertain actual bias against her and through her against her client, Mrs. Cord, and, therefore, I can no longer proceed in these cases.

I have discussed with Judge Michael R. Griffin of the First Judicial District the possibility of his serving as judge in these two cases in the future and he has agreed to do that.

I understand that he is acceptable to both parties in this case; is that correct?

MS. NOVAKOVICH: Yes, Your Honor.

MR. BRADLEY: Correct, Your Honor.

THE COURT: All right. I will have an order appointing him and we will ask the Supreme Court to assign him to these two cases. As of today I no longer have anything to do with either one of them.

Is there anything else you want to put on the record?

MR. BRADLEY: I would respectfully, Your Honor, ask permission to ask you one question.

THE COURT: You may.

MR. BRADLEY: I understand from your statement on the record that your bias arose by virtue of this charge against you created by Miss Novakovich's complaint to the Judicial Commission as of October 25th, 1980—

THE COURT: 28th.

MR. BRADLEY: October 28th, 1980, and that there was no bias, actual, implied or otherwise, either against Miss Novakovich or her client prior to that?

THE COURT: That's correct. I had no reason to have any bias against anyone in this case up to that point.

MR. BRADLEY: Thank you, Your Honor.

MS. NOVAKOVICH: I'd like to make a record, if the Court please.

THE COURT: You may.

MS. NOVAKOVICH: Let the record show that Mr. William Bradley, counsel for the co-executors, has made the request that the Court make a record stating the reasons for its actual bias against me and for the Court's withdrawing from any proceedings in the matter of the estate of E. L. Cord, Case Number 292073 and in Cord versus Neuhoff, et al., 298806, filed in the Second Judicial District Court, the State of Nevada, and that I have requested this record be made in open court by a letter directed to Your Honor.

It is my opinion that this actual bias began six years ago and continued throughout the entire proceedings.

That this bias became even more apparent after the Supreme Court reversed this Court's decision and remanded the case for further hearing.

Let the record show that after the remand, before the second hearing commenced, I asked this Court to disqualify himself from any further proceedings, but this Court refused to do so.

I'd like the record to, also, show that the reason I made a complaint to the Judicial Discipline Commission was that we had waited approximately seventeen months for a decision from Your Honor and none was forthcoming in spite of your repeated assurances that there would be a decision soon. I believe twice in Chambers you told us there would be a decision soon.

I felt that the seventeen months wait was long enough and that I had no other alternative but to go before the Commission and tell them that we wanted a decision.

My client is a woman of advanced years. This case has been going on for six and a half years. We are now into our seventh year.

I felt there came a time when it had to be concluded and that is the reason that I felt it was necessary to cite you and to make the complaint.

THE COURT: All right. In view of Miss Novakovich's statement I think it's, also, necessary to put on the record the fact that I was informed by the Commission that they found the complaint totally without merit.

We will be in recess.

MR. BRADLEY: Thank you, Your Honor.

Appendix C

In the Supreme Court of the State of Nevada
No. 14718

Charles E. Cord, and Edward D. Neuhoff,
Co-Executors of the Estate of E. L. Cord,
aka Errett L. Cord, aka Errett Lobban Cord,
deceased, and individually,
Petitioners,

vs.

Second Judicial District Court of the State of Nevada
in and for the County of Washoe
and the Honorable Michael Griffiin, District Judge,
Respondents.

[Filed Dec. 22, 1983]

ORDER GRANTING WRIT OF PROHIBITION

On May 12, 1982, this court affirmed the district court's judgment declaring all assets in the estate of E. L. Cord to be his separate property. *See* Cord v. Cord, 98 Nev. 210, 644 P.2d 1026 (1982). Thereafter, on February 28, 1983, Virginia Cord, real party in interest, filed the following post-appeal motions in district court: 1) a motion to vacate and set aside the judgment of the district court pursuant to NRCP 60(b)(3), on the ground that the district court's judgment is void due to the trial judge's actual bias against her attorney; and 2) a motion to restrain the co-executors of E. L. Cord's estate from distributing any of the estate assets, on the same ground that the district court's judgment is void due to the trial judge's bias. This petition for a writ of prohibition,

brought by the executors of E. L. Cord's estate, seeks to prevent the district court from hearing these post-appeal motions.[1]

The petitioners contend, among other things, that Virginia Cord is estopped from asserting the alleged voidness of the district court's judgment. We agree. Virginia Cord did not treat the district court's judgment as being void when she appealed from the judgment and attacked it on its merits. She was well aware of the facts giving rise to her present claim of "voidness" while her appeal was pending in this court. Yet, it was not until after her appeal to this court proved unsuccessful that she challenged the lower court's judgment as being void.

For these same reasons we find that Virginia Cord has waived her present challenges to the district court's judgment. Contrary to the authorities cited in Virginia Cord's answer to this petition, we have previously applied a waiver theory in such disqualification matters. *See, e.g.*, A Minor v. State, 86 Nev. 691, 476 P.2d 11 (1970); State ex rel. Dep't Welfare v. District Ct., 85 Nev. 642, 462 P.2d 37 (1969). Furthermore, we find that as a matter of law, Cord's motion to vacate the lower court's judgment under NRCP 60(b)(3) was not brought "within a reasonable time." *See* NRCP 60(b); *cf.* United States v. Conforte, 624 F.2d 869, 879 (9th Cir. 1980), *cert. denied*, 449 U.S. 1012 (1980) (defendant's motion for new trial on ground of newly discovered evidence as to trial judge's bias was untimely since defendant had knowledge before trial of

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[1]Virginia Cord, the real party in interest, has moved this court to strike the petitioners' authorities submitted in reply to her answer. The motion is opposed. Cause appearing, we deny the motion to strike.

certain facts giving rise to the potential disqualification; certain grounds for recusal of trial judge could not be raised for the first time on appeal either).

For the reasons set forth above, the district court lacks jurisdiction to hear the post-appeal motions filed below by Virginia Cord. Accordingly, the writ of prohibition shall issue, directing the district court to dismiss the aforementioned motions. *See* Renfro v. Forman, 99 Nev. 70, 657 P.2d 1151 (1983).

It is so ORDERED.[2]

/s/ STEFFEN, J.
Steffen

/s/ GUNDERSON, J.
Gunderson

/s/ ROBISON, D.J.
Robison

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[2]Chief Justice Noel E. Manoukian, and Justices Charles E. Springer and John Mowbray have voluntarily disqualified themselves from consideration of this case.

The Governor designated the Honorable Norman C. Robison, District Judge of the Ninth Judicial District, to sit in this case in place of the Honorable John Mowbray. Nev. Const., art 6, § 4.

Appendix D

In the Supreme Court of the State of Nevada
Case No. 14718

Charles E. Cord and Edward D. Neuhoff, Co-Executors of the Estate of E. L. Cord, aka Errett L. Cord, aka Errett Lobban Cord, deceased, and individually,
Petitioners,

vs.

Second Judicial District Court of the State of Nevada In and for the County of Washoe and The Honorable Michael Griffin, District Judge
Respondents.
Virginia Kirk Cord,
Real Party in Interest.

[Filed Jan. 6, 1984]

PETITION FOR REHEARING

Virginia Kirk Cord respectfully requests this Honorable Court to grant a rehearing on the Petition for the Writ of Prohibition filed by Petitioners and Order Granting the Writ of Prohibition upon the grounds that the Court *has misapprehended the law and has* failed to perceive the distinction between a waiver of a judicial disqualification and a waiver of a void judgment (of which there can be none) when it entered its Order granting the Writ of Prohibition.

ARGUMENT

I. THERE CAN BE NO ESTOPPEL FROM ASSERTING THE VOIDNESS OF THE DISTRICT COURT'S JUDGMENT.

This Court finds that Virginia Kirk Cord is estopped from asserting the alleged voidness of the District Court's Judgment.

This is not the law, and the Court has erred.

In *Thayer v. Village of Downers Grove,* 16 N E 2nd 717 (Ill. 1938) the Supreme Court of Illinois held:

> "It is a rule *well established* that a void judgment or order may be vacated at any time, and the doctrine of laches and *estoppel* do not apply." (Emphasis added)

See also, *Bratkovich v. Bratkovich,* 180 N E 2nd 716 (Ill. 1962). *Cash v. Maloney,* 402 Ill. 528, 84 N E 2nd 390 (Ill. 1949).

In the case at bar, Judge Guinan admitted having an actual bias against counsel for Virginia Kirk Cord and through her counsel against Mrs. Cord, at the time he entered his judgment of November 5, 1980. (Exhibit 1, Answer and Opposition to Petition for Writ of Prohibition.)

It is axiomatic that a litigant is entitled to have his or her case heard before an unbiased judge.

Judge Guinan acted in a manner inconsistent with due process of law. *There has been a serious infringement of the constitutional guaranty of due process. This Court's order establishes a dangerous precedent.*

A judgment is void if it is entered in violation of due process of law. Federal Procedure, Lawyers Ed. # 51.139. A judgment is void where a court rendering it acted in a manner inconsistent with due process of law. *U. S. v. 119.67 Acres of Land, Etc.,* 663 Fed. Rep. 2d 1328, 5th Cir. U. S. Ct. of Appeals (1981), 11 Wright & Miller, Federal Practice and Procedure # 2862 (1973) *Bass v. Hoagland,* C. A. 5th, 1949, 172 F 2d 205, certiorari denied 70 S. Ct. 57, 338 U. S. 816, 94 L. Ed. 494, noted 1950 59 Yale L. J. 345 & 62 Harv. L. Rev. 1400. In *Aguchak v. Montgomery Ward, Inc.,* 520

P 2d 1352 (Alaska 1974) the court held: ". . . a void judgment is entitled to no respect whatever." p. 1354

A court has no authority to act if it has an actual bias. Where the court has absolutely no authority to act, the parties cannot be estopped from objecting thereto, even if such party appealed the judgment on the merits. *State ex rel Abel v. Breen*, 41 Nev. 516, 173 P. 555 (1918). *Fitchett v. Henry*, 31 Nev. 326, 102 P. 865, 104 P. 1060 (1909). *B. F. Hastings & Co. v. Burning Moscow Co.*, 2 Nev. 93 (1866).

II. VIRGINIA KIRK CORD HAS NOT WAIVED HER CHALLENGE TO THE DISTRICT COURT'S JUDGMENT.

In *Hill v. Hill*, 185 S W 2d 245 (Ky. 1945) the court held:

> "A void judgment is a complete nullity and leaves the parties in the same position as if no judgment had been entered. Such a judgment cannot be validated by subsequent proceedings instituted for that purpose, *or by appeal* or in any other manner." (Emphasis Added)

The affirmance of a void judgment upon appeal imparts no validity to the judgment, but is itself void, by reason of the nullity of the judgment appealed from. *Ball v. Tolman*, 67 P. 339 (Calif. 1902).

In *Redlands High School Dist. et al. v. Superior Court of San Bernardino County*, 125 P 2d 490 (1942) the Supreme Court of California held: page 498

> "It is the firmly established rule which has been lost sight of in many cases, that a void judgment may not be given life or validity by a mere affirmance thereof by an appellate court, even though that later court may have had appellate jurisdiction to determine that issue.

This court said in Pioneer Land Co. v. Maddux, 109 Cal. 633, 642, 42 P 295, 297, 50 Am. St. Rep. 67:

'It has been held that the affirmance by an appellate court of a void judgment imparts to it no validity, and especially if such affirmance is put upon grounds not touching its validity.'

"And again:

'Thus, where a void judgment had been affirmed on appeal by the Supreme Court of Texas, the court said:

'The judgment of affirmance rendered by this court could not impart to it validity, but would itself be void by reason of the nullity of the judgment appealed from.'

"See also, Ball v. Tolman, 135 Cal. 375, 67 P 339, 87 Am. St. Rep. 110; Bank of Italy v. Cadenasso, 206 Cal. 436, 274 P 534. It is said in Pennell v. Superior Court, 87 Cal. App. 375, 378, 262 P. 48-49:

'The rule is well recognized that judgments void on their face may always be attacked either directly or collaterally.'

'In Estate of Pusey, 180 Cal. 368, 374, 181 P 648, 650, it is said quoting from Forbes v. Hyde, 31 Cal. 342, 348:

'A judgment absolutely void may be attacked anywhere directly or collaterally whenever it presents itself, either by parties or strangers. It is simply a nullity, and can be neither a basis nor evidence of any right whatever.'

"See also, Pioneer Land Co. v. Maddux, 109 Cal. (633), 638, 42 P 295, 50 Am. St. Rep. 67 and Adams v. Adams, 154 Mass. 290, 28 N E 260, 13 L. R. A. 275. Moreover, the affirmance of a void judgment on appeal does not make it valid. Ball v. Tolman, 135 Cal. 375, 67 P 339, 87 Am. St. Rep. 110; Pioneer Land Co. v. Maddux, 109

Cal. 633, 42 P 295, 50 Am. St. Rep. 67." See also *Kennedy v. Chadwell,* 215 P 2d 549 (Okla. 1950).

The rule is clearly enunciated in Am. Jur. 2d # 49 Void Judgments:

> "A void judgment is not entitled to the respect accorded to and is attended by none of the consequences of, a valid adjudication. Indeed a void judgment need not be recognized by anyone, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding force or efficacy for any purpose or at any place. It cannot affect, impair or create rights, nor can any rights be based thereon.
>
> "Although it is not necessary to take any steps to have a void judgment reversed or vacated, it is open to attack or impeachment in any proceedings, direct, or collateral, and at any time or place, at least where the invalidity appears on the face of the record.
>
> "It is not entitled to enforcement and is ordinarily, no protection to those who seek to enforce it. All proceedings founded on the void judgment are themselves regarded as invalid and ineffective for any purpose.
>
> "In short, a void judgment is regarded as a nullity and the situation is the same as if there were no judgment. It accordingly leaves the parties litigant in the same position they were before trial."

When a judgment is void it is as though the proceedings have never occurred. The judgment is a mere nullity and the parties are in the same position as if there had been no judgment. *Romito v. Maxwell,* 227 N E 2d 223 (Ohio 1967).

The parties cannot give substance to a nullity. *Hill v. Hill,* 229 Ky. 351, 185 S W 2d 245 (Ky. 1945).

Counsel for Virginia Kirk Cord did not waive any challenge to Judge Guinan. He was finished with the case. He rendered a final judgment on November 5, 1980. He was divested of jurisdiction when the appeal was filed. Thereafter, when the case was on appeal, he admitted having entertained an actual bias when he rendered the judgment of November 5, 1980. The actual bias was not revealed before November 5, 1980. He admitted on January 17, 1981, that he formed an actual bias on October 28, 1980. The case at that time had been submitted to him for decision.

The cases cited by this court, i.e., *A Minor v. State,* 86 Nev. 691, 476 P 2d 11, (1970) and *State ex rel Dept. Welfare v. District Court,* 85 Nev. 642, 462 P 2d 37 (1969), *have nothing to do with a void judgment!* They merely cite the rule that once a party or his attorney is notified that a particular judge has been assigned to hear the matter and then proceeds with a hearing of a contested matter before that judge, the challenge as to that judge under the statute providing for disqualification is waived.

Mrs. Cord did not proceed with a hearing before Judge Guinan after he expressed actual bias. The case was on appeal at that time. However, the actual bias was entertained at the time he rendered his judgment. N. R. S. 1.230 (1) provides a judge shall not act as such in an action where he entertains actual bias. A judge must disqualify himself. A party is not required to make a motion.

III. REASONABLE TIME REQUIREMENT DOES NOT APPLY TO A VOID JUDGMENT

This court is also in error when it states that as a matter of law that Cord's motion to vacate the lower court's judg-

ment under NRCP 60 (b) (3) was not brought "within a reasonable time."

The "reasonable time" requirement of the rule providing for a motion to set aside a judgment does not apply when a judgment is attacked as void. *Springfield Credit Union v. Johnson,* 599 P 2d 772, 123 Ariz. 319 (1979). *Pac. Nat. Bank v. Lyon,* 165 Cal. Rptr. 95, 105 CA. 3rd Supp. 8 (1980). *Havlen v. Waggoner,* 48 Ill. Dec. 411, 416 N E 2d 684, 92 Ill. App. 3d 916 (1981). *International Glass & Mirror v. Banco Ganadero Y Argricola,* C. A. 25 Ariz. App. 604, 545 P 2d 452 (Ariz. 1976).

A judgment that is void for lack of due process may be set aside at any time despite any statute of limitations otherwise applicable to an action to set aside such judgment. U. S. C. A. Const. Amend. 14; K. S. A. Const. Bill of Rights #2, *Weaver v. Frazee,* 547 P 2d 1005, 219 Kan. 42 (1976).

A void judgment may be attacked at any time in a direct or collateral action. Rules of Civil Procedure 60 (b) (4) *Nesbit v. City of Albuquerque,* 575 P 2d 1340, 91 N M 455 (1979).

A void judgment is a nullity and may be collaterally attacked at any time. *Mobile Oil Corp. v. McHenry,* 436 P 2d 982, 200 Kan. 211 (1968).

A void judgment may be attacked at any time regardless of the number of years passed since the entering of that judgment. *Mount Prospect State Bank v. Forestry Recycling Sawmill,* 48 Ill. Dec. 889, 417 N E 2d 621, 93 Ill. App. 3rd 448 (1980).

Rule 60 (b) (3) authorizes relief from void judgments. Necessarily a motion under this part differs markedly

from motions under the other clauses of Rule 60 (b). 11 C. Wright and A. Miller, Federal Practice and Procedure #2862 p. 197 where it is stated there is no time limit on an attack of a judgment as void, and further states that even the requirement that the motion be made within a "reasonable time" cannot be enforced with regard to an attack on a judgment as void.

The right to relief from a void judgment is absolute and not a matter within the court's discretion. Nor do the time limitations applicable generally to 60 (b) motions apply to motions seeking relief for voidness. Fed. Procedure, Lawyers Edition, #51:138.

Judgments are void if a court acted in a manner inconsistent with due process of law. *U. S. v. 119.67 Acres of Land,* 663 Fed. Rep. 2d 1328, 5th Circuit Ct. of Appeals (1981). Certainly Judge Guinan in rendering a judgment with actual bias against Mrs. Cord's counsel and thus against Mrs. Cord, was not acting in a manner consistent with due process of law.

A judgment was vacated as void 30 years after entry in *Crosby v. Bradstreet Co.,* CA. 2d (1963) 312 F 2d 438, U. S. C. A. Const. Amend. A delay of 22 years did not bar relief in *U. S. v. Williams,* D. C. 109 F. Supp. 456 (Ark. 1952).

In *Standard Oil Co. of California v. United States,* 429 U. S. 17, 50 L. Ed. 2d 21, 97 S. Ct. 31 (1976), a judgment of the United States District Court of California in an antitrust action was summarily affirmed in 1973 by the United States Supreme Court. (412 U. S. 924, 37 L. Ed. 2d 152, 93 S. Ct. 2750). Seeking to have the judgment set aside because of alleged misconduct by government counsel and by a

material witness, the losing party filed a motion in the Supreme Court requesting that it recall its mandate and grant leave to proceed in the District Court pursuant to the provisions of Rule 60 (b) of the Federal Rules of Civil Procedure relating to relief from a judgment.

Denying the motion to recall its mandate, without prejudice to the movant's right to proceed in the District Court, the United States Supreme Court in a per curiam opinion expressing the unanimous view of the eight participating members of the court, held that appellate leave was not required before a Federal District Court could reopen a case which had been reviewed on appeal in order for the District Court to entertain a motion under Rule 60 (b).

Thus a motion for relief from a Federal District Court judgment which had been affirmed on appeal was held proper for the District Court's consideration without appellate leave.

Within any period of time, and in any appropriate court, a void judgment may be set aside. *Appeal of Sergent,* 360 N E 2d 761, 49 Ohio Misc. 36 (1976).

This court cites *In United States v. Conforte,* 624 F 2d 879 (9th Cir. 1980) which is clearly not in point. In that case the defendant had knowledge *before trial* of certain facts giving rise to potential disqualification. Nor is *Renfro v. Forman,* 99 Nev. 70, 657 P 2d 1151 (1983) which did not pertain to a void judgment. The judgment in that case was admittedly valid. The court held that treating a judgment or order as final and appealable estopps the party from later claiming it to be non-final or non-appealable.

In *Shannon v. Norman Block, Inc.*, 256 A 2d 214 (Rhode Island 1969), the Supreme Court of Rhode Island held: p. 219.

> "It is also well settled that there is no necessity to make any showing of a meritorious defense where a litigant moves to vacate a void judgment. If the judgment is void, the movant has an unqualified right to relief. 7 Moores Fed. Practice, #60-25 (2), at 264. Hicklin v. Edwards, 8 Cir. 226 F 2d 410; Schwartz v. Thomas, 95 U. S. App. D. C. 365, 222 F 2d 305."

Such a judgment cannot be validated by affirmance by an appellate court, at least if such affirmance is put upon ground not touching upon the validity of the judgment—as was the case in the instant case.

We have in the instant case a judgment rendered by Judge Guinan who by his own admission had an actual bias against Mrs. Cord's counsel and thus against Mrs. Cord at the time he entered his judgment. Therefore, the judgment is void. The court has power to declare the absolute nullity of a Supreme Court judgment in any case where an attempt is being made to enforce that judgment. Courts 481 *Tracy v. Dufrene*, 121 So. 2d 843 (La. 1960).

A void judgment gains no validity by being affirmed at least where the validity of the judgment was not an issue on appeal. An appeal from a judgment entered by a court having no jurisdiction of the subject matter confers no jurisdiction on the appellate court and a judgment of a reviewing court of general jurisdiction affirming a judgment of the lower court is itself void if the latter had no jurisdiction over the subject matter. 5 Am. Jur. 2d #935.

WHEREFORE, for the reasons given, and to prevent a gross injustice and a blatant constitutional violation of due process which should be clearly obvious to this Court, VIRGINIA KIRK CORD prays that a rehearing be granted and Petition for Writ of Prohibition be denied.

RESPECTFULLY SUBMITTED this 6th day of January, 1984.

/s/ NADA NOVAKOVICH
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Reno, Nevada 89505
Attorney for Virginia Kirk Cord

Appendix E

In the Supreme Court of the State of Nevada
No. 14718

Charles E. Cord, and Edward D. Neuhoff,
Co-Executors of the Estate of E. L. Cord,
aka Errett L. Cord, aka Errett Lobban Cord,
deceased, and individually,
Petitioners,

vs.

Second Judicial District Court of the State of Nevada
in and for the County of Washoe
and the Honorable Michael Griffin, District Judge,
Respondents.

[Filed Feb. 15, 1984]

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c)(1).

It is so ORDERED.

/s/ STEFFEN, J.
Steffen

/s/ GUNDERSON, J.
Gunderson

/s/ ROBISON, D.J.
Robison

Appendix F

In the Supreme Court of the State of Nevada
No. 14718

Charles E. Cord and Edward D. Neuhoff,
Co-Executors of the Estate of E. L. Cord,
aka Errett L. Cord, aka Errett Lobban Cord,
deceased and individually,
Petitioners,

vs.

Second Judicial District Court of the State of Nevada
in and for the County of Washoe
and the Honorable Michael R. Griffin, District Judge,
Respondents.

WRIT OF PROHIBITION

TO: The Honorable Michael R. Griffin, Visiting Judge of the Second Judicial District Court:

WHEREAS, the petitioners having duly filed herein their verified petition for a writ of prohibition, and this Court having made and filed its written decision that a writ of prohibition issue,

NOW, THEREFORE, WE DO COMMAND the District Court, which lacks jurisdiction to hear the post-appeal motion filed by Virginia Cord, to dismiss the motions as set forth in our order of December 22, 1983.

WITNESS The Honorable Thomas L. Steffen and E. M. Gunderson, Associate Justices of the Supreme Court of the State of Nevada, and Norman C. Robison, District

Judge, and attested by my hand and seal this 23rd day of February, 1984.

[Seal]

/s/ JUDITH FOUNTAIN
Clerk of the Supreme Court